

Appl. No.: 10/024,441  
Amendment dated October 19, 2005  
Reply to Office Action of June 16, 2005

### REMARKS/ARGUMENTS

The office action of June 16, 2005, has been carefully reviewed and these remarks are responsive thereto. Claims 8 and 26 have been amended. Claims 1-8 and 19-26 remain pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

#### ***Rejections Under 35 U.S.C. § 112, 2<sup>nd</sup> ¶***

Claims 8 and 26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has amended these claims accordingly, and respectfully request the rejection be withdrawn.

#### ***Rejections Under 35 U.S.C. § 103***

Claims 1, 5-8, 19, and 23-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tuexen et al. ("Requirements for Reliable Server Pooling," hereinafter Tuexen) in view of Aull (U.S. Pat. No. 6,898,710).

In order to establish a *prima facie* case of obviousness under § 103(a), three criteria must exist: 1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings; 2) there must be a reasonable expectation of success; and 3) the prior art reference(s) must teach or suggest all the claim limitations. *See* MPEP § 706.02 (j); *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). However, the Office Action fails to establish a *prima facie* case of obviousness by failing to provide a proper motivation or suggestion to combine the references, and further because, even if combined, there would be no expectation of success in the alleged combination.

The Office Action indicates that it would have been obvious to combine Tuexen with Aull because:

Appln. No.: 10/024,441  
Amendment dated October 19, 2005  
Reply to Office Action of June 16, 2005

"Legacy applications and servers typically employ proprietary computer interfaces and custom software clients. These interfaces and clients typically rely on a simple user ID and password scheme to authenticate the identity of a user. However, as noted previously, making significant modifications to these interfaces and clients to work with signature certificates is generally very expensive," (lines 58-65 of column 2 in Aull).

Office Action, p. 4.

Respectfully, this argument is unpersuasive. Aull, at the cited portion or otherwise, makes no indication, suggestion or motivation that legacy servers should be included in server pools as taught by Tuexen. The cited support for the alleged motivation appears to actually teach away from combining legacy systems into server pools, as the cited reference acknowledges the high cost of making significant modifications. That is, without the benefit of Applicant's disclosure, integrating a legacy system inherently requires making significant modifications to the interfaces of the legacy server, which as noted by the Aull discussion cited in the Office Action is generally very expensive. Thus, why would one of ordinary skill in the art modify such legacy servers at such great cost? The Office Action provides no reason to do so, and the cited reference's caution regarding the high cost of such modifications in fact suggests it shouldn't be attempted in the first place.

In addition, Aull is merely concerned with the inclusion of legacy systems in a public key infrastructure. Tuexen does not indicate that it uses a public key infrastructure. Accordingly, the Aull system is irrelevant to the Tuexen system, and the Office Action offers no reason why one of ordinary skill would want to pay the high cost of significant modification to add an irrelevant feature to Tuexen. Applicant thus fails to see the relevance of legacy servers using a simple ID and password scheme, and the difficulty or expense in making legacy server interfaces work with signature certificates. This is not a motivation or suggestion to combine the references.

Even if Aull were combined with Tuexen, Applicants respectfully submit that there is no reasonable expectation of success in the resulting combination. As discussed in Applicant's disclosure, legacy servers do not operate in conformance with protocols used by reliable server pools. Application, ¶ [06]. The mere inclusion of a legacy server in a reliable server pool would

Appl. No.: 10/024,441  
Amendment dated October 19, 2005  
Reply to Office Action of June 16, 2005

thus not operate properly, unless the system were modified as taught by Applicant's own specification, the inclusion of which in any such rejection would constitute improper hindsight reasoning.

Because there is no motivation or suggestion to combine Tuexen with Aull, and because there is no reasonable expectation of success even if the references were combined, the Office Action fails to establish a *prima facie* case of obviousness, and the rejection is respectfully traversed.

Claims 2-3 and 20-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tuexen in view of Aull, and further in view of Callaghan et al. (U.S. Pat. No. 5,737,523, hereinafter Callaghan). This rejection is traversed at least because, as discussed above, the combination of Tuexen and Aull is flawed, as discussed above. In addition, the alleged motivation to combine the references, "performing the NFS request when the NFS client has sufficient access status," is not a motivation to combine references but is rather the end result after the combination has already been made, i.e., is a conclusion the Examiner has apparently reached after having benefited from reading Applicant's own disclosure, and is thus impermissible hindsight.

The Office Action also fails to address the limitations of claims 3 and 21, namely, the Office Action cites no reference as teaching or suggesting that the legacy server comprises a daemon for providing the legacy application status to the proxy pool element. In the event the rejections are maintained, the Examiner is requested to cite supporting evidence as required by the MPEP.

Claims 2-3 and 20-21 are thus allowable for at least the same reasons as their respective base claims.

Claims 4 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tuexen in view of Aull and Callaghan, and further in view of Yamamoto (U.S. Pat. No. 6,816,860). This rejection is traversed at least because, as discussed above, the combinations of Tuexen, Aull, and Callaghan are flawed, as discussed above. The inclusion of Yamamoto does not cure the above described deficiencies, and claims 4 and 22 are allowable for at least the same reasons as their respective base claims.

Appln. No.: 10/024,441  
Amendment dated October 19, 2005  
Reply to Office Action of June 16, 2005

### CONCLUSION

All rejections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. However, if for any reason the Examiner believes the application is not in condition for allowance or there are any questions, the Examiner is requested to contact the undersigned at (202) 824-3153.

Respectfully submitted,  
BANNER & WITCOFF, LTD.

Dated this 19 day of Oct., 2005

By: /Ross Dannenberg/  
Ross Dannenberg, Registration No. 49,024  
1001 G Street, N.W.  
Washington, D.C. 20001-4597  
Tel: (202) 824-3000  
Fax: (202) 824-3001

RAD/mmd